IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Liyakat Ali. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 424/2005 against the order dated 22-3-2005 passed by the Addl. Sessions Judge No.1, Bikaner, in Criminal Revision No. 3/2005.

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Date of Order: November 06, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.M. Khan, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. B.S. Rathore, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 22-3-2005 passed by the Additional Sessions Judge No.1, Bikaner (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 3/2005, whereby the revision petition filed by the petitioner against the order dated 19-5-2004 passed by the Additional Chief Judicial Magistrate No.2, Bikaner (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the parties.

Carefully gone through the orders passed by both the Courts below, as also the record of the trial Court.

On an application under Section 125 of the Code filed by the non-petitioner No.2, the trial Court, vide order dated 19.5.2004, granted monthly allowance of maintenance @ Rs.900/- per month in favour of non-petitioner No.2 Baila alias Shyokat and @ Rs.450/- per month each in favour of Abrar and Faraha, the minor son and daughter of the petitioner, who are residing with the non-petitioner No.2. That order came to be challenged by the petitioner before the Revisional Court. The Revisional Court dismissed the revision petition finding no ground to interfere in the order of the trial Court.

It is contended by the learned counsel for the petitioner that the petitioner divorced the non-petitioner No.2 and sent a registered letter of divorce to her and, therefore, the non-petitioner No.2 is not entitled for the maintenance. Learned counsel for the non-petitioner No.2 submits that the petitioner failed to establish the divorce before the courts below and there had been no divorce in accordance with the Mohammedan Law and, therefore, the Court below are justified in granting the maintenance.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

From a perusal of the statement of non-petitioner

No.2, she categorically came with the case that her Nikah was solemnized with the present petitioner, which has not been disputed by the petitioner and on the date of filing of the application and even thereafter, the Nikah subsists and the marriage has not been dissolved in accordance with Mohammedan Law. She came with the allegation that the petitioner subjected her to harassment and cruelty in connection with demand of dowry and she had been turned out from the matrimonial home. The petitioner is earning Rs.8000/- per month as he is an employee of Rajasthan State Road Transport Corporation on the post of a Conductor. These facts have not been disputed by the present petitioner. The statement of non-petitioner No.2, who was examined as AW 1, finds support from the statement of AW 2 Ayyub Ali. There is evidence that the non-petitioner No.2 lodged a crime report against the present petitioner under Section 498-A, IPC.

Petitioner himself appeared as NAW 1 and stated that the marriage (Nikah) between the parties was solemnized 17 to 18 years ago and out of that wed-lock, one son Abrar and daughter Faraha were born. He stated in his statement that he divorced the wife on 8-2-1999 in the presence of witnesses namely, Abdul Sattar, Mohammed Salim and Firoz; however, admitted that his wife has instituted a case against him for the offences under Sections 498-A and 406 IPC, which is pending in

the Court. He stated that the intimation of divorce (Talak) was sent to Smt. Bala vide EX.D/2. EX.D/2 is an envelope, which was received un-claimed. On being opened in the Court, nothing was found in the envelope EX.D/2 except that it was an envelope. Thus, no intimation was found contained in the envelope EX.D/2 intimating the non-petitioner No.2 that she has been divorced. Again, the envelope EX.D/2 was sent by Liyakat Khan, whereas the name of the present petitioner is Liyakat Ali and admittedly, that Liyakat Khan has divorced Bala. The petitioner has produced a copy of the letter which was sent in the said envelope, wherein it has been stated that Liyakat Khan gave Talak to Bala. He admitted that in the Talaknama, the name of petitioner Liyakat Ali and the name of non-petitioner No.2 Baila alias Shyokat have not been mentioned. He stated that the original Talaknama is with him, which he has not filed in the Court. Similar is the statement of other witnesses produced by the present petitioner.

The trial Court came to the conclusion that firstly the Talaknama has not been established; secondly EX.D/2 did not contain any intimation of Talak and thirdly even assuming that the envelope was sent, it was sent by Liyakat Khan to Bala, whereas the parties are Liyakat Ali and Baila alias Shyokat. The trial Court, on appreciation of the evidence, came to the conclusion that the petitioner has failed to establish his case.

Even in the statement before the trial Court, the petitioner has not stated the exact words, by which he gave divorce (Talak) to the non-petitioner No.2. He has only stated that he has divorced his "wife" without disclosing the name, the manner and the words exactly used by him. Learned counsel for the petitioner has relied on two decisions of this Court in Ramzan Vs. Smt. Salma, 1987 Cr.L.R. (Raj.) 324; and Abid Ali Vs. Mst. Rasia Begum etc. etc., 1998 RCC 51, wherein this Court held that oral divorce is permissible under Mohammedan Law; even if it is not proved, the statement given by the husband in court can declare divorce from the date of his statement and the wife is entitled to maintenance for a period of Iddat under the Act.

Learned counsel for the non-petitioner No.2 has relied on a decision of the Hon'ble Supreme Court in Shamim Ara Vs. State of U.P. & Anr., 2003 Cr.L.R. (SC) 24, wherein the Hon'ble Apex Court held that the Talaq to be effective has to be pronounced. The term "pronounce" means to proclaim, to utter formally, to utter rhetorically, to declare to, utter, to articulate. The Apex Court further held that a mere plea taken in the written statement of a divorce having been pronounced sometime in th past cannot by itself be treated as effectuating Talaq on the date of delivery of the copy of the written statement to the wife. A plea of previous divorce taken in the

written statement cannot at all be treated as pronouncement of Talaq by the husband on wife on the date of filing of the written statement in the Court followed by delivery of a copy thereof to the wife.

Keeping in view the decision of the Hon'ble Supreme Court in Shamim Ara Vs. State of U.P. & Anr. (supra), the judgments relied on by the learned counsel for the petitioner are of no help to the petitioner. Both the Courts below held that the petitioner has failed to prove that he has divorced his wife non-petitioner No.1 by giving Talak and, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of the process of the Court warranting interference in inherent jurisdiction.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

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